IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 131 of 2006
With
COMPANY PETITION No. 132 of 2006
With
COMPANY PETITION No. 133 of 2006
With
COMPANY PETITION No. 134 of 2006
With
COMPANY PETITION No. 172 of 2006

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M/S. PRAAG CHEMICALS - Petitioner(s)
Versus
PARAG MILLS PRIVATE LTD. - Respondent(s)

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Appearance :
MRS SWATI SOPARKAR for Petitioner(s) : 1,
MS KJ BRAHMBHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 02/02/2007

COMMON ORAL JUDGMENT

1. All these Company Petitions are filed by the respective petitioning creditors for an appropriate order of winding up of the respondent company – Parag Mills Private Limited under the provisions of Companies Act, 1956, more particularly, under Sections 433 and 434 of the Companies Act, 1956.

2. It is the case on behalf of the petitioner of Company Petition No. 131 of 2006 that an amount of Rs.26,04,786/- is due and payable towards the principal amount and a further sum of Rs.10,14,605/- is due and payable by the respondent company to the petitioner company towards the interest on the aforesaid amount. It is the case on behalf of the petitioner of Company Petition No. 132 of 2006 that an amount of Rs.1,04,588/- is due and payable towards the principal amount and a further sum of Rs.64,581/- is due and payable by the respondent company to the petitioner company. It is the case on behalf of the petitioner of Company Petition No. 133 of 2006 that an amount of Rs.10,03,870/- is due and payable by the

respondent company to the petitioner company towards the principal amount and a further sum of Rs.3,39,500/- is due and payable towards the interest on the aforesaid amount. It is also the case on behalf of the petitioner of Company Petition No. 134 of 2006 that an amount of Rs.99,967/- is due and payable to the petitioner company by the respondent company towards the principal amount and a further sum of Rs.64,305/- is due and payable towards the interest on the aforesaid amount. So far as Company Petition No. 172 of 2006 is concerned, the claim of the petitioning creditor is of Rs.5,20,397/- towards the principal amount and Rs.3,36,851/- towards the interest. It is the contention on behalf of the petitioners that the aforesaid amount is due and payable by the respondent company and inspite of various demands/requests, the aforesaid amount has not been paid though the goods supplied have been consumed. It is the case on behalf of the respective petitioners that the respondent company was served with the statutory notices as required under Section 434 of the Companies Act by notices dated 15th February, 2006 and 9th

November, 2005 respectively and inspite of service of statutory notices, the respondent company has neither replied to the same nor has made any payment and therefore, it is submitted that the respondent company is not in a position to pay the debts to its creditors. It is submitted that earlier also so far as other creditors are concerned, who have not filed their separate affidavits in support of the present petitions, filed Company Petitions before this Court and there were a settlements arrived at between the said petitioning creditors and the respondent company and the Company Petitions were withdrawn, however, subsequently, the commitments made by the respondent company are not fulfilled and even the cheques issued pursuant to the said settlements are dishonoured. It is submitted that so far as other 14 creditors are concerned, who have preferred earlier Company Petitions, which came to be disposed of on the consent terms, their total outstanding is of Rs.13,70,722/-. It is also further submitted that even the debts and the amount payable to the respective petitioners are not disputed by

the respondent company and therefore, it is submitted that when the respondent company has lost its financial substratum, the present petitions be allowed by passing an appropriate order of winding up of the respondent company.

3. Ms. Kalpana Brahmbhatt, learned advocate appearing for the respondent company has fairly submitted that the amount/debts payable to the respective petitioners are not disputed and/or they are as such, admitted, however, looking to the present financial situation, the respondent company is not in a position to make the payment immediately and therefore, some installments be granted and if the petitioning creditors are ready to accept some lesser amount than the payment can be made to the respective petitioning creditors in installments.

4. Heard Mrs. Swati Soparkar, learned advocate appearing for the respective petitioners and Ms. Kalpana Brahmbhatt, learned advocate appearing for the respondent company.

5. It is required to be noted that the debts and the dues payable to the respective petitioners are not disputed. The claims of the respective petitioners are for the supply of the goods, which have been consumed by the respondent company. The respondent company has been served with the statutory notices as required under Section 434 of the Companies Act, 1956. There is no reply to the statutory notice. It appears and even considering the affidavit in reply that the respondent company is not in a position to pay the dues to its creditors at present. Earlier also, sufficient opportunity has been given to the respondent company to come out with a concrete proposal, however, the respondent company has failed and therefore, these Company Petitions came to be admitted and were advertised in local newspapers as per the order dated 10th November, 2006 and some 14 persons i.e. Creditors of the respondent company have filed affidavits in support of the petitions by submitting that they had earlier filed Company Petitions before this Court and there were settlements and the Company Petitions were withdrawn as the dues were settled, however, out

of the claim of Rs.14,00,194/-, only payment of Rs.29,427/- was made and for balance amount, the payment is not made and even the cheques which were issued by the respondent company are bounced. Thus, it appears that even after the settlement before this Court in the Company Petitions, the respondent company has failed to honour their commitment and the cheques are bounced. Thus, the respondent company is not in a position to pay its debts to its creditors inclusive of the petitioners as well as other creditors, who have filed affidavits in support of the present Company Petitions. So far as the submission on behalf of the respondent company that if some installments are granted then the respondent company will make the payment is concerned, apart from the fact that there is no concrete proposal, even considering the past conduct of the respondent company, the said proposal lacks bonafide. Inspite of the commitment before this Court in other Company Petitions in case of 14 creditors, who have filed their affidavits in support of the present petitions, the respondent company has failed to honour the commitment and even the cheques were

bounced. As stated above, the debts are not in dispute. The respondent company is not able to pay its dues to its creditors inclusive of the petitioners. Under the circumstances, it appears that the respondent company has lost its financial substratum and is required to be ordered to be wound up.

6. For the reasons stated above, all the Company Petitions are allowed. The respondent company – Parag Mills Private Limited is hereby ordered to be wound up. The Official Liquidator attached with this Court is appointed as Official Liquidator for the respondent company. The Official Liquidator is hereby asked to take possession of the property (movable & immovable) of the respondent company along with its bank accounts, cash and accounts books, etc. The Official Liquidator shall submit his report within a period of three months. If required, he can take services of the Official Valuer for the purpose of preparation of possession note, etc. No costs.

[M.R.Shah, J.]

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